

AMENDED IN ASSEMBLY JULY 2, 2003

AMENDED IN SENATE MAY 13, 2003

AMENDED IN SENATE APRIL 29, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 620

Introduced by Senator Scott

(Coauthors: Senators Bowen, Ortiz, and Romero)

(Coauthors: Assembly Members Laird, Lieber, and Lowenthal)

February 20, 2003

An act to amend Sections 787, 1725.5, 10127.10, 10127.13, and 10509.8 of, and to add Sections 789.9, 789.10, 1724, 1749.8, ~~10127.17, and 10127.18~~ and 10127.17 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 620, as amended, Scott. Annuities: life insurance: required disclosures and prohibited sales practices.

Existing law imposes a special duty of honesty, good faith, and fair dealing on an insurer, broker, agent, and all others engaged in the transaction of insurance with a prospective insured who is 65 years of age or older, except for specified types of insurance transactions. Under existing law, the Insurance Commissioner is authorized to assess an administrative penalty for the violation of this duty and other provisions relating to senior insurance. Existing law establishes a 30-day period following the purchase of an individual life insurance policy or an individual annuity contract by a senior citizen, during which time the

policy or contract may be canceled and all premiums and fees refunded, and requires certain disclosures in that regard.

Existing law regulates viatical settlements, as defined, and imposes certain requirements on a person entering into or soliciting viatical settlements.

This bill would enact additional restrictions on advertising practices that target senior citizens and would expand the scope of existing restrictions, currently applicable to disability insurance, to life insurance, ~~annuity products and annuities~~. The bill would ~~require an issuer of annuities to develop a suitability plan for its agents to use in selling annuities~~ *provide that insurers and life agents owe a special duty of suitability, as defined, to seniors who apply to purchase annuities*. The bill would prohibit insurance agents, brokers, and solicitors who are not attorneys from sharing commissions or other compensation with attorneys. The bill would require, *effective January 1, 2005*, specific training ~~and continuing education~~ for ~~insurance~~ *life agents, brokers, and representatives* in order for these producers to sell annuities. The bill ~~would limit the investment of premiums during the 30-day cancellation period~~, would revise the disclosure requirements applicable to the sale of life insurance and annuity products to seniors, and would impose certain additional disclosure requirements applicable to life insurance policies and annuities. The bill would impose restrictions on the sale of life insurance policies and annuities in the home of a senior citizen. The bill would prohibit an agent or insurer from recommending the unnecessary replacement, as defined, of an annuity by a senior citizen. The bill would impose certain duties on the Insurance Commissioner in this regard, and enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 787 of the Insurance Code is amended
- 2 to read:
- 3 787. Any advertisement or other device designed to produce
- 4 leads based on a response from a potential insured which is
- 5 directed towards persons age 65 or older shall disclose that an
- 6 agent may contact the applicant if that is the fact. In addition, an
- 7 agent who makes contact with a person as a result of acquiring that



1 person's name from a lead generating device shall disclose that fact
2 in the initial contact with the person.

3 (a) No insurer, agent, broker, solicitor, or other person or other
4 entity shall solicit persons age 65 and older in this state for the
5 purchase of disability insurance, life insurance, or annuities
6 through the use of a true or fictitious name which is deceptive or
7 misleading with regard to the status, character, or proprietary or
8 representative capacity of the entity or person, or to the true
9 purpose of the advertisement.

10 (b) For the purposes of this section, an advertisement includes
11 envelopes, stationery, business cards, or other materials designed
12 to describe and encourage the purchase of a policy or certificate of
13 disability insurance, life insurance, or an annuity.

14 (c) Advertisements shall not employ words, letters, initials,
15 symbols, or other devices which are so similar to those used by
16 governmental agencies, a nonprofit or charitable institution,
17 senior organization, or other insurer that they could have the
18 capacity or tendency to mislead the public. Examples of
19 misleading materials, include, but are not limited to, those which
20 imply any of the following:

21 (1) The advertised coverages are somehow provided by or are
22 endorsed by any governmental agencies, nonprofit or charitable
23 institution or senior organizations.

24 (2) The advertiser is the same as, is connected with, or is
25 endorsed by governmental agencies, nonprofit or charitable
26 institutions or senior organizations.

27 (d) No advertisement may use the name of a state or political
28 subdivision thereof in a policy name or description.

29 (e) No advertisement may use any name, service mark, slogan,
30 symbol, or any device in any manner that implies that the insurer,
31 or the policy or certificate advertised, or that any agency who may
32 call upon the consumer in response to the advertisement, is
33 connected with a governmental agency, such as the Social Security
34 Administration.

35 (f) No advertisement may imply that the reader may lose a
36 right, or privilege, or benefits under federal, state, or local law if
37 he or she fails to respond to the advertisement.

38 (g) An insurer, agent, broker, or other entity may not use an
39 address so as to mislead or deceive as to the true identity, location,
40 or licensing status of the insurer, agent, broker, or other entity.

1 (h) No insurer may use, in the trade name of its insurance policy
2 or certificate, any terminology or words so similar to the name of
3 a governmental agency or governmental program as to have the
4 capacity or the tendency to confuse, deceive, or mislead a
5 prospective purchaser.

6 (i) All advertisements used by agents, producers, brokers,
7 solicitors, or other persons for a policy of an insurer shall have
8 written approval of the insurer before they may be used.

9 (j) No insurer, agent, broker, or other entity may solicit a
10 particular class by use of advertisements which state or imply that
11 the occupational or other status as members of the class entitles
12 them to reduced rates on a group or other basis when, in fact, the
13 policy or certificate being advertised is sold on an individual basis
14 at regular rates.

15 (k) No advertisement for an event ~~designed to promote the sale~~
16 ~~of insurance products or settlements or to produce leads for future~~
17 ~~sales of insurance products or settlements may use the terms~~ *where*
18 *insurance products will be offered for sale may use the terms*
19 “seminar,” “class,” “informational meeting,” or substantially
20 equivalent terms to characterize the purpose of the public
21 gathering or event unless it adds the words “and *insurance* sales
22 presentation” immediately following those terms in the same *type*
23 *size and font* as those terms.

24 ~~(l) No agent, broker, solicitor, or other person or entity may use~~
25 ~~a professional designation unless that designation is conferred by~~
26 ~~an accredited college or university or conferred by a long-standing~~
27 ~~professional trade association that is nonprofit and not controlled~~
28 ~~by founding individuals.~~

29 ~~(m) License information in an advertisement shall be listed~~
30 ~~immediately prior to, and in the same font as, any professional~~
31 ~~designation.~~

32 *(l) No advertisement for a gathering or event where leads for*
33 *future sales of insurance products will be solicited or gathered may*
34 *use the terms “seminar,” “class,” “informational meeting,” or*
35 *substantially equivalent terms to characterize the purpose of the*
36 *gathering or event unless it also states the following: “Information*
37 *for future insurance sales will be gathered at this event.” This*
38 *statement shall appear in a prominent location on the*
39 *advertisement in the same type size and font as the terms*
40 *“seminar,” “class,” “informational meeting,” or substantially*

1 *equivalent term used to characterize the nature of the gathering or*
2 *event.*

3 *(m) A person or entity using a title or designation, other than*
4 *the insurance license held by the person or entity, in the*
5 *advertisement or sale of disability insurance, life insurance, or*
6 *annuities shall act with the utmost good faith for the benefit of*
7 *insureds and prospective insureds, and in a manner consistent with*
8 *the level of expertise, care, and experience indicated by the title or*
9 *designation.*

10 SEC. 2. Section 789.9 is added to the Insurance Code, to read:

11 789.9. (a) Insurers *and life agents* owe a special duty of
12 suitability to seniors 65 years and older who apply ~~for or own~~
13 ~~annuity products.~~

14 ~~(b) If the senior's purpose in purchasing any annuity is to affect~~
15 ~~Medi-Cal eligibility, the issuance shall be unsuitable if the~~ *to*
16 *purchase annuities. For purposes of this section, "duty of*
17 *suitability" means a responsibility to recommend the purchase or*
18 *replacement of an annuity only when the insurer or life agent has*
19 *reasonable grounds to believe, based upon information provided*
20 *by the senior to the insurer or life agent about the senior's*
21 *investments, insurance coverage, and financial situation, that the*
22 *annuity meets the senior's financial objectives and insurance*
23 *needs. This duty is in addition to any other duty, whether express*
24 *or implied, that may exist.*

25 (b) *Before issuing or delivering an annuity to a senior, the*
26 *issuer shall make reasonable efforts to obtain relevant information*
27 *from the senior about the senior's financial status, tax status,*
28 *investment objectives, and any other information used or*
29 *considered to be reasonable to ensure that the annuity meets the*
30 *senior's insurance needs and financial objectives. No unsuitable*
31 *annuity product shall be issued or delivered to a senior in this state.*

32 (c) *In addition to any other reasons that an individual annuity*
33 *may be determined to be unsuitable for a senior, an annuity shall*
34 *be unsuitable in all of the following circumstances:*

35 (1) *The senior's purpose in purchasing the annuity is to affect*
36 *Medi-Cal eligibility and the purchaser's assets are equal to or less*
37 *than the community spouse resource allowance, established*
38 *annually by the State Department of Health Services pursuant to*
39 *the Medi-Cal Act (Chapter 7 (commencing with Section 14000))*

1 of Part 3 of Division 9 of the Welfare and Institutions Code),
2 or the senior would otherwise qualify for Medi-Cal.

3 (2) The senior's purpose in purchasing the annuity is to affect
4 Medi-Cal eligibility and, after the purchase of the annuity, the
5 senior or the senior's spouse would not qualify for Medi-Cal.

6 (3) The annuity includes a surrender penalty that may be
7 triggered by the annuitant's death.

8 (d) Each issuer of annuity products shall make reasonable
9 efforts to train its agents on how to recognize indicators that a
10 prospective annuitant may lack the short-term memory or
11 judgment to knowingly purchase an insurance product, and what
12 to do if those indicators are observed.

13 (e) In the event that an annuity specified in subdivision (c) is
14 issued to a senior, the issuer shall rescind the contract, refund to
15 the purchaser all premiums paid for the annuity, subject to the
16 provisions of Section 10127.10, and refund to the purchaser all
17 fees and costs plus interest at a rate of 10 percent per annum.

18 (f) Every issuer of annuity products shall retain all records and
19 documentation demonstrating the evaluation of the suitability of
20 a particular product to an individual senior and shall make this
21 documentation available to the commissioner upon request.

22 SEC. 3. Section 789.10 is added to the Insurance Code, to
23 read:

24 789.10. (a) Each issuer of annuities shall develop a suitability
25 plan applicable to seniors 65 years of age and older, and train its
26 agents to use this plan.

27 (b) The plan shall utilize criteria, including, but not limited to,
28 the following: the age of purchaser, insured, or annuitant; his or her
29 competence to contract; his or her purpose in purchasing the
30 annuity product; the likelihood the senior will need access to cash
31 for future needs such as health care, long-term care, or other
32 emergencies; the likelihood that those needs may occur during the
33 period surrender charges would be assessed; and the likelihood the
34 senior may need access to the annuitized funds to meet those needs.

35 (c) Each insurer who receives an application from a senior for
36 a deferred annuity shall, before issuing the contract, mail the
37 applicant a supplemental application requesting information
38 necessary to make the determination of suitability. The
39 supplemental application may be sent to the applicant at the same
40 time as the disclosure required by Section 10127.10.

~~(d) Each insurer shall develop and provide to all agents and other insurer representatives authorized to solicit individual consumers for the sale of annuities, a checklist, screening device, or other procedure to ensure that prospective clients have the mental capacity to enter into a contract. If a written instrument is used, it shall be retained by the insurer and made available to the commissioner upon request.~~

~~(e) In the case that a presumptively unsuitable annuity is issued to a senior, the issuer shall retain all records and documentation supporting its rebuttal of the presumption of unsuitability and shall make this documentation available to the commissioner upon request.~~

~~(f) Every insurer or entity marketing annuities shall establish auditable procedures for verifying compliance with this section.~~

~~(g) In addition to other remedies available in this article, code, and in California law, the commissioner, upon a finding of unsuitability, shall order the insurer to rescind the contract and to refund the premium plus interest of 10 percent per annum, including all fees and costs. An additional administrative penalty equal to half the deposit amount may be ordered by the commissioner or by a court in actions brought under subdivision (e) of Section 789.~~

789.10. (a) This section applies to the sale, offering for sale, or generation of leads for the sale of life insurance, including annuities, to senior insureds or prospective insureds by any person.

(b) Any person who meets with a senior in the senior's home is required to deliver a notice in writing to the senior no less than 24 hours prior to that individual's initial meeting in the senior's home, unless the senior initiated contact with an agent with whom the senior has an existing insurance relationship and requested a meeting with the agent in his or her home that same day. In that case, a notice shall be delivered to the senior prior to the meeting. The notice shall be in substantially the following form, with the appropriate information inserted, in 14-point type:

“(1) During this visit or a follow-up visit, you will be given a sales presentation on the following [indicate all that apply]:

() Life insurance, including annuities

() Other insurance products [specify]: _____.

1 (2) *You have the right to have other persons present at the*
2 *meeting, including family members, financial advisors or*
3 *attorneys.*

4 (3) *You have the right to end the meeting at any time.*

5 (4) *You have the right to contact the Department of Insurance*
6 *or the Department of Corporations for information, or to file a*
7 *complaint. [The notice shall include the consumer assistance*
8 *telephone numbers at those departments]*

9 (5) *The following individuals will be coming to your home: [list*
10 *all attendees, and insurance license information, if applicable]*”

11 (c) *Upon contacting the senior in the senior’s home, the person*
12 *shall, before making any statement other than a greeting, or asking*
13 *the senior any other questions, state that the purpose of the contact*
14 *is to talk about insurance, or to gather information for a follow-up*
15 *visit to sell insurance, if that is the case, and state all of the*
16 *following information:*

17 (1) *The name and titles of all persons arriving at the senior’s*
18 *home.*

19 (2) *The name of the insurer represented by the person, if known.*

20 (d) *Each person attending a meeting with a senior shall provide*
21 *the senior with a business card or other written identification*
22 *stating the person’s name, business address, telephone number,*
23 *and any insurance license number.*

24 (e) *The persons attending a meeting with a senior shall end all*
25 *discussions and leave the home of the senior immediately after*
26 *being asked to leave by the senior.*

27 (f) *Any person attending a meeting with a senior shall*
28 *immediately terminate the meeting if the person knows or should*
29 *know that the senior lacks the short-term memory or judgment to*
30 *knowingly purchase an insurance product.*

31 (g) *A person may not solicit a sale or order for the sale of an*
32 *annuity or life insurance policy at the residence of a senior, in*
33 *person or by telephone, by using any plan, scheme, or ruse that*
34 *misrepresents the true status or mission of the contact.*

35 SEC. 4. Section 1724 is added to the Insurance Code, to read:

36 1724. An agent, broker, or solicitor who is not an active
37 member of the State Bar of California may not share a commission
38 or other compensation with an active member of the State Bar of
39 California. For purposes of this section, “commission or other
40 compensation” means pecuniary or nonpecuniary compensation

1 of any kind relating to the sale or renewal of an insurance policy
2 or certificate or an annuity, including, but not limited to, a bonus,
3 gift, prize, award, or finder's fee.

4 SEC. 5. *Section 1725.5 of the Insurance Code is amended to*
5 *read:*

6 1725.5. (a) For purposes of Sections 32.5, 1625, 1626,
7 1724.5, 1758.1, 1765, 1800, 14020, 14021, and 15006, every
8 licensee shall prominently affix, type, or cause to be printed on
9 business cards, written price quotations for insurance products,
10 and print advertisements distributed exclusively in this state for
11 insurance products its license number in type the same size as any
12 indicated telephone number, address, or fax number. If the licensee
13 maintains more than one organization license, one of the
14 organization license numbers is sufficient for compliance with this
15 section.

16 (b) *Effective January 1, 2005, for purposes of Sections 32.5,*
17 *1625, 1626, 1724.5, 1758.1, 1765, 1800, 14020, 14021, and*
18 *15006, every licensee shall prominently affix, type, or cause to be*
19 *printed on business cards, written price quotations for insurance*
20 *products, and print advertisements, distributed in this state for*
21 *insurance products, the words "Insurance Agent," or "Insurance*
22 *Broker-Agent," as applicable to the licensee, in type size no*
23 *smaller than the largest indicated telephone number. If the licensee*
24 *maintains more than one type of license, one of the types is*
25 *sufficient for compliance with this section. If the licensee*
26 *prominently uses the term "insurance" on the materials specified*
27 *in this subdivision, the licensee may satisfy this requirement by*
28 *using the terms "Insurance License" or "Insurance Lic."*
29 *immediately prior to, and in type size no smaller than, its license*
30 *number as required by subdivision (a).*

31 (c) In the case of transactors, or agent and broker licensees, who
32 are classified for licensing purposes as ~~a solicitor~~ *solicitors*,
33 working as ~~an exclusive employee~~ *employees* of a motor ~~club~~
34 *clubs*, organizational licensee numbers shall be used.

35 ~~(e)~~

36 (d) Any person in violation of this section shall be subject to a
37 fine levied by the commissioner in the amount of two hundred
38 dollars (\$200) for the first offense, five hundred dollars (\$500) for
39 the second offense, and one thousand dollars (\$1,000) for the third
40 and subsequent offenses. The penalty shall not exceed one

1 thousand dollars (\$1,000) for any one offense. These fines shall be
2 deposited into the Insurance Fund.

3 ~~(d)~~

4 (e) A separate penalty shall not be imposed upon each piece of
5 printed material that fails to conform to the requirements of this
6 section.

7 ~~(e)~~

8 (f) If the commissioner finds that the failure of a licensee to
9 comply with the provisions of subdivision (a) *or* (b) is due to
10 reasonable cause or circumstance beyond the licensee's control,
11 and occurred notwithstanding the exercise of ordinary care and in
12 the absence of willful neglect, the licensee may be relieved of the
13 penalty in subdivision ~~(e)~~ (d).

14 ~~(f)~~

15 (g) A licensee seeking to be relieved of the penalty in
16 subdivision ~~(e)~~ (d) shall file with the department a statement with
17 supporting documents setting forth the facts upon which the
18 licensee bases its claims for relief.

19 ~~(g)~~

20 (h) This section does not apply to any person or entity that is not
21 currently required to be licensed by the department or that is
22 exempted from licensure.

23 ~~(h)~~

24 (i) This section does not apply to general advertisements of
25 motor clubs that merely list insurance products as one of several
26 services offered by the motor club, and do not provide any details
27 of the insurance products.

28 ~~(i)~~

29 (j) This section does not apply to life insurance policy
30 illustrations required by Chapter 5.5 (commencing with Section
31 10509.950) of Part 2 of Division 2 or to life insurance cost indexes
32 required by Chapter 5.6 (commencing with Section 10509.970) of
33 Part 2 of Division 2.

34 ~~(j)~~

35 (k) This section shall become operative January 1, 1997.
36 SEC. 6. Section 1749.8 is added to the Insurance Code, to
37 read:

38 ~~1749.8. (a) Every insurance agent, broker, or insurer~~
39 ~~representative licensed for the sale of annuities shall satisfactorily~~

1749.8. *Effective January 1, 2005, every life agent who sells annuities shall satisfactorily complete eight hours of training prior to soliciting individual consumers in order to sell annuities.*

~~(b) Every insurance agent, broker, or insurer representative licensed for the sale of~~ *Effective January 1, 2005, every life agent who sells annuities shall satisfactorily complete four hours of continuing education training every two years prior to license renewal. This* *For resident agents, this requirement shall be part of, and not in addition to, the continuing education requirements of Section 1749.3.*

(c) The training ~~and continuing education~~ required by this section shall *be approved by the commissioner and shall* consist of topics related to annuities, and California law, regulations, and requirements related to annuities, prohibited sales practices, and fraudulent and unfair trade practices. Subject matter determined by the commissioner to be primarily intended to promote the sale or marketing of annuities shall not qualify for credit towards the training ~~and continuing education~~ requirement. Any course or seminar that is disapproved under the provisions of this section shall be presumed invalid for credit towards the training ~~and continuing education~~ requirement of this section unless it is approved in writing by the commissioner.

~~SEC. 6.~~

SEC. 7. Section 10127.10 of the Insurance Code is amended to read:

10127.10. (a) Every policy of individual life insurance and every individual annuity contract that is initially delivered or issued for delivery to a senior citizen in this state on and after January 1, 2004, shall have printed thereon or attached thereto a notice stating that, after receipt of the policy by the owner, the policy may be returned by the owner for cancellation by delivering it or mailing it to the insurer or agent from whom it was purchased. The period of time set forth by the insurer for return of the policy by the insured shall be clearly stated on the notice and this period shall be not less than 30 days. The insured may return the policy to the insurer by mail or otherwise at any time during the period specified in the notice. In the case of individual life insurance policies and individual annuity contracts (other than certain variable contracts and modified guaranteed contracts), return of the policy during the cancellation period shall have the effect of

1 voiding the policy from the beginning, and the parties shall be in
2 the same position as if no policy had been issued. All premiums
3 paid and any policy fee paid for the policy shall be refunded by the
4 insurer to the owner within 30 days from the date that the insurer
5 is notified that the owner has canceled the policy. ~~In the case of~~
6 ~~variable annuity contracts, variable life insurance contracts, and~~
7 ~~modified guaranteed contracts, the premium shall not be invested~~
8 ~~until after the expiration of the 30-day cancellation period. Return~~
9 *During the 30-day cancellation period, the premium may be*
10 *invested only in fixed-income investments and money-market*
11 *funds. Return of the contract during the cancellation period shall*
12 void the policy from the beginning, and the parties shall be in the
13 same position as if no policy had been issued, unless the insured
14 knowingly signed a written waiver allowing the premium to be
15 invested during the 30-day cancellation period. After executing a
16 valid waiver, cancellation during the 30-day period shall entitle the
17 owner to a refund of account value and any policy fee paid for the
18 policy. The account value or premium and policy fee shall be
19 refunded by the insurer to the owner within 30 days from the date
20 that the insurer is notified that the owner has canceled the policy.

21 (b) This section applies to all individual policies issued or
22 delivered to senior citizens in this state on or after January 1, 2004.
23 All policies subject to this section which are in effect on January
24 1, 2003, shall be construed to be in compliance with this section,
25 and any provision in any policy which is in conflict with this
26 section shall be of no force or effect.

27 (c) Every individual life insurance policy and every individual
28 annuity contract, other than variable contracts and modified
29 guaranteed contracts, subject to this section, that is delivered or
30 issued for delivery in this state shall have the following notice
31 either printed on the cover page or policy jacket in 12-point bold
32 print with one inch of space on all sides or printed on a sticker that
33 is affixed to the cover page or policy jacket:

34
35 “IMPORTANT

36
37 YOU HAVE PURCHASED A LIFE INSURANCE POLICY
38 OR ANNUITY CONTRACT. CAREFULLY REVIEW IT FOR
39 LIMITATIONS.

40



1 THIS POLICY MAY BE RETURNED WITHIN 30 DAYS
2 FROM THE DATE YOU RECEIVED IT FOR A FULL
3 REFUND BY RETURNING IT TO THE INSURANCE
4 COMPANY OR AGENT WHO SOLD YOU THIS POLICY.
5 AFTER 30 DAYS, CANCELLATION MAY RESULT IN A
6 SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER
7 CHARGE.”

8
9 The phrase “after 30 days, cancellation may result in a
10 substantial penalty, known as a surrender charge” may be deleted
11 if the policy does not contain those charges or penalties.

12 (d) Every individual variable annuity contract, variable life
13 insurance contract, or modified guaranteed contract subject to this
14 section, that is delivered or issued for delivery in this state, shall
15 have the following notice either printed on the cover page or policy
16 jacket in 12-point bold print with one inch of space on all sides or
17 printed on a sticker that is affixed to the cover page or policy
18 jacket:

19
20 “IMPORTANT

21
22 YOU HAVE PURCHASED A VARIABLE ANNUITY
23 CONTRACT (VARIABLE LIFE INSURANCE CONTRACT,
24 OR MODIFIED GUARANTEED CONTRACT). CAREFULLY
25 REVIEW IT FOR LIMITATIONS.

26
27 THIS POLICY MAY BE RETURNED WITHIN 30 DAYS
28 FROM THE DATE YOU RECEIVED IT FOR A REFUND OF
29 THE POLICY’S ACCOUNT VALUE ON THE DAY THE
30 POLICY IS RECEIVED BY THE INSURANCE COMPANY OR
31 AGENT WHO SOLD YOU THIS POLICY. A RETURN OF THE
32 POLICY AFTER 30 DAYS MAY RESULT IN A
33 SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER
34 CHARGE.”

35
36 The words “known as a surrender charge” may be deleted if the
37 contract does not contain those charges.

38 (e) This section does not apply to life insurance policies issued
39 in connection with a credit transaction or issued under a
40 contractual policy-change or conversion privilege provision

1 contained in a policy. Additionally, this section shall not apply to
2 contributory and noncontributory employer group life insurance,
3 contributory and noncontributory employer group annuity
4 contracts, and group term life insurance, with the exception of
5 subdivision (f).

6 (f) When an insurer, its agent, group master policyowner, or
7 association collects more than one month's premium from a senior
8 citizen at the time of application or at the time of delivery of a
9 group term life insurance policy or certificate, the insurer must
10 provide the senior citizen a prorated refund of the premium if the
11 senior citizen delivers a cancellation request to the insurer during
12 the first 30 days of the policy period.

13 (g) For purposes of this chapter, a senior citizen means an
14 individual who is 60 years of age or older on the date of purchase
15 of the policy.

16 ~~SEC. 7.~~

17 *SEC. 8.* Section 10127.13 of the Insurance Code is amended
18 to read:

19 10127.13. (a) Prior to the sale of any life insurance policy or
20 annuity contract to a senior citizen, or the replacement of any life
21 insurance policy or annuity contract held by a senior citizen, the
22 life insurer and life agent shall either disclose the surrender period,
23 all associated penalties, and the length of the deferral period, if
24 any, in 12-point bold print on the cover sheet of the policy or
25 disclose the location of the surrender information in bold 12-point
26 print on the cover page of the policy, or printed on a sticker that is
27 affixed to the cover page or to the policy jacket. The notice
28 required by this section may appear on a cover sheet that also
29 contains the disclosure required by subdivision (d) of Section
30 10127.10.

31 (b) *Within 10 business days after an annuity has been issued to*
32 *a senior citizen, the insurer shall send to the senior citizen by*
33 *pre-paid first class mail a statement in 14-point type showing the*
34 *account as it will be or is anticipated to be immediately after*
35 *termination of the 30-day period in which the annuity may be*
36 *canceled without penalty, or any longer period during which the*
37 *insurer allows cancellation without penalty. The statement shall*
38 *set forth the dollar amounts of the initial premium paid, the*
39 *account value, the surrender value, the surrender penalty amount*
40 *and the death benefit lump sum amount. The statement shall be*

1 *titled “Account Statement Estimated as of [date immediately after*
2 *expected termination of the period during which the annuity may*
3 *be canceled without penalty]” The statement shall also state that*
4 *the purchaser has 30 days from the date the annuity is delivered to*
5 *cancel the annuity without penalty and shall refer the purchaser to*
6 *the documents provided with the annuity for more information. The*
7 *statement shall also prominently identify the name, address, and*
8 *customer service telephone number of the insurer; and*
9 *information, such as the name of the annuitant and policy number,*
10 *to identify the account.*

11 ~~SEC. 8.~~

12 ~~SEC. 9.~~ Section 10127.17 is added to the Insurance Code, to
13 read:

14 10127.17. (a) In addition to the disclosure required pursuant
15 to Section 10127.10, every policy of life insurance and every
16 annuity that is proposed to be sold and issued to a senior citizen
17 shall be accompanied by a one-page outline disclosure, to be
18 completed by the agent and presented to the purchaser, consisting
19 of the following information:

20 (1) Relevant information about any surrender charges that
21 would be paid by the purchaser if the purchaser were to replace or
22 revoke the insurance contract before its maturity, including, but
23 not limited to, the amount, whether the charge is incurred at the
24 death of the annuitant or at some other time, and if there is an
25 annual surrender charge-free withdrawal available.

26 (2) The length of the deferral period, if any.

27 (3) The fact that the agent will receive a payment or
28 commission from the insurer issuing the policy, if that is the case,
29 and a statement that the amount of the payment or commission
30 may be affected by the price of the policy and the length of the
31 deferral period, if any.

32 (4) The fact that the sale or liquidation of any stock, bond, IRA,
33 certificate of deposit, mutual fund, annuity, or other asset to fund
34 the purchase of the product may have tax consequences, result in
35 early withdrawal penalties, or result in other costs or penalties as
36 a result of the sale or liquidation.

37 (5) A statement that the applicant should consult with an
38 independent advisor other than an insurance representative, such
39 as an attorney, accountant, or other professional, regarding the

1 legal and tax consequences of purchasing the annuity or using the
2 annuity to qualify for programs such as Medi-Cal.

3 (6) The right to return the policy within 30 days of its issuance
4 for a full refund.

5 (7) A statement that if the applicant has an existing annuity, that
6 he or she should contact the issuer of that annuity or the applicable
7 agent for an explanation of the surrender charges and the
8 ramifications of surrendering the existing annuity.

9 (b) The senior citizen receiving the one-page outline disclosure
10 shall acknowledge receipt of the document by signing a copy and
11 returning it to the agent.

12 ~~SEC. 9. Section 10127.18 is added to the Insurance Code, to~~
13 ~~read:~~

14 ~~10127.18. (a) This section applies to the sale or offering for~~
15 ~~sale of life insurance policies and annuities.~~

16 ~~(b) An insurer, agent, or broker is required to deliver a notice~~
17 ~~in writing to all clients and prospective clients 65 years of age or~~
18 ~~older with whom a meeting is scheduled in the client's or~~
19 ~~prospective client's home. The notice shall be delivered no less~~
20 ~~than 24 hours before the meeting is scheduled to begin. The notice~~
21 ~~shall include all of the following information:~~

22 ~~(1) The right of the client or prospective client to terminate the~~
23 ~~meeting at any time.~~

24 ~~(2) The right of the client or prospective client to have other~~
25 ~~persons present at the meeting, including family members,~~
26 ~~financial advisors, or attorneys.~~

27 ~~(3) The right of the client or prospective client to contact the~~
28 ~~Department of Insurance or the Department of Corporations for~~
29 ~~information or to make a complaint, with the notice to include the~~
30 ~~telephone numbers for the consumer complaint lines for those~~
31 ~~departments.~~

32 ~~(c) Upon contacting a client or prospective client who is 65~~
33 ~~years of age or older at his or her home, an insurer, agent, or broker~~
34 ~~shall, before making any other statement except a greeting, or~~
35 ~~asking the client or prospective client any other questions, state~~
36 ~~that the purpose of the contact is to effect a sale, and state all of the~~
37 ~~following information:~~

38 ~~(1) The identity of the person making the solicitation.~~

~~(2) The name of the insurer, broker, or agent making the solicitation or represented by the person making the solicitation, if known.~~

~~(3) That a life insurance policy or an annuity may be offered for sale.~~

~~(d) The agent or assistants of life agents shall, also show or display identification that states the information required by subdivision (c) as well as the address of the place of business and the insurance license number of the licensee.~~

~~(e) An insurer, agent, or broker shall leave the home of a client or prospective client as soon as reasonably possible after being asked to leave by the client or prospective client.~~

~~(f) An insurer, agent, or broker may not solicit a sale or order for the sale of an annuity or life insurance policy at the residence of a client or prospective client, in person or by telephone, by using any plan, scheme, or ruse that misrepresents the true status or mission of the contact.~~

~~(g) An insurer, agent, or broker has an affirmative duty to verify that the client or prospective client has the capacity to enter into a contract, and shall terminate any meeting in which the client's or prospective client's capacity to enter into a contract is not clear.~~

~~(h) The provisions of this section also apply to individuals who are not insurers, agents, or brokers but who facilitate, arrange, or participate in the sales presentation of an annuity or life insurance policy and receive any money, gift, value, or other consideration from the insurer, broker, or agent for the services rendered to assist in the sales presentation.~~

SEC. 10. Section 10509.8 of the Insurance Code is amended to read:

10509.8. (a) A violation of this article shall occur if an agent or insurer recommends the replacement or conservation of an existing policy by use of a materially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any, or recommends that an insured 65 years of age or older purchase an unnecessary replacement annuity.

(b) For purposes of this section, "unnecessary replacement" means the sale of an annuity to replace an existing annuity that requires that the insured will pay a surrender charge for the annuity that is being replaced and that does not confer a substantial

1 financial benefit over the life of the policy to the purchaser so that
2 a reasonable person would believe that the purchase is
3 unnecessary.

4 (c) Patterns of action by policyowners who purchase
5 replacement policies from the same agent after indicating on
6 applications that replacement is not involved, shall constitute a
7 rebuttable presumption of the agent's knowledge that replacement
8 was intended in connection with the sale of those policies, and such
9 patterns of action shall constitute a rebuttable presumption of the
10 agent's intent to violate this article.

11 (d) This article does not prohibit the use of additional material
12 other than that which is required that is not in violation of this
13 article or any other statute or regulation.

